S.B. CIVIL WRIT PETITION NO.2569/2005

Sohan Lal. vs. Nand Lal and another.

Date : 15.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.V Mehta, for the petitioner.

None present for the respondents.

- - - - -

Heard learned counsel for the petitioner.

Learned counsel for the petitioner pointed out that by order dated 20.1.2005, the trial court fixed the date for evidence of the petitioner and his witnesses as 8.2.2005. In the order dated 20.1.2005 itself, it has been clearly mentioned that the witnesses Kanhaiya Lal, Kesri Mal and Mangi Lal may be summoned. On the next date, the affidavits of Kanhaiya Lal, Kesri Mal and Mangi Lal were produced and the case was fixed for evidence on 23.3.2005. On 23.3.2005, the evidence of the petitioner's witness PW2 Kesri Mal was completed and thereafter, the trial court straightaway closed the evidence of the petitioner and did not summon the other witnesses as per the order dated 20.1.2005. It is submitted that in view of the above reason, the order dated

23.3.2005 is absolutely illegal and deserves to be set aside.

I considered the submissions of learned counsel for the petitioner and perused the order-sheets dated 20.1.2005, 8.2.2005 and 23.3.2005.

It appears from the order-sheets that the court below already permitted the petitioner to produce the evidence through the process of the Court, then without making any effort, the court below has closed the evidence of the petitioner that too on the day when one of the witness of the petitioner was cross examined by the plaintiff. It appears that no reasonable opportunity was given to the petitioner by the trial court to produce the evidence.

In view of the above, this writ petition is allowed, the order dated 23.3.2005 is set aside and the trial court is directed to give opportunity to the petitioner to produce the witnesses in accordance with law.

(PRAKASH TATIA), J.

S.Phophaliya